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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,867	04/20/2001	Debra Sue Caswell	8079M	3296

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EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/838,867

Applicant(s)

CASWELL ET AL.

Examiner

John R Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-128 is/are pending in the application.
- 4a) Of the above claim(s) 1-104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 105-128 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7. 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-14, drawn to laundry additive compositions, classified in class 510, various subclasses.
  - II. Claims 15-42, drawn to an article of manufacture, classified in class 510, subclass 439.
  - III. Claims 43-57, drawn to a kit, classified in class 510, various subclasses.
  - IV. Claims 58-64, drawn to a customized laundry solution, classified in class 510, various subclasses.
  - V. Claims 65-75, drawn to a method of customizing a laundry solution, classified in class 510, various subclasses.
  - VI. Claims 76-77, drawn to a business method, classified in class 705, subclass unknown.
  - VII. Claim 78, drawn to dispersing solids, classified in class 222, subclass unknown.
  - VIII. Claim 79, drawn to an interactive method, classified in class 704, subclass unknown.
  - IX. Claims 80-83, drawn to a merchandising display, classified in class 704, subclass unknown.

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- X. Claims 84-88, drawn to a method of providing information, classified in class 704, subclass unknown.
- XI. Claims 89-104, drawn to perfumed articles, classified in class 512, subclass 1+.
- XII. Claims 105-128, drawn to effervescent articles, classified in class 510, subclass 513+.

2. The inventions are distinct, each from the other because of the following reasons:

The other compositions and methods do not require the particulars of the effervescent composition, which requires the presence of an effervescing system

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Jason Camp on March 7, 2003 a provisional election was made with traverse to prosecute the invention of Group XII, claims 105-128. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-104 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 105, 106, 109, 111-117, 120-122, 126 and 127 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EP 812,808 A1. See table and examples.

8. Claims 105, 109, 111-122, 124 and 125 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 99/35234. The reference is in German. Reference is made to column and line in the equivalent Haerer et al., US 6,410,500 B1. See examples. Dehypon LS 54 is an ethoxylated and propoxylated alcohol.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 105-118, 120-123 and 125-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 812,808 A1. The reference discloses water softening tablets comprising 10-70% of a polyfunctional carboxylic acid or salt thereof, 15-45% by weight of carbonate or bicarbonate, 1-6% of a binder, 2-19% of polymer, 0-45% of layered silicate, 0-15% of disintegrating agent and 0-5% of precipitation inhibitor (abstract). As detergents and fabric softeners are not disclosed, it would be obvious to exclude them. Tablets of 20 g are disclosed, but in view of the general disclosure of "tablets", and no specific teachings regarding size or weight, the examiner takes the position that the production of tablets as small as aspirin tablets would be obvious. Free water appears to be absent from the formulations. Precipitation inhibitors are optional, so making the tablet free of such materials with MW of greater than 2000 would be

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obvious. In addition, polymers of MW less than 2000 are taught to be useful (p. 3, lines 28+). Bleach actives are optional. Polyethylene glycol is taught to be a suitable ingredient (p. 3, lines 28+), and is known in the surfactant art to act as an emulsifier. The carbonate or bicarbonate is taught to act as a builder (p. 3, line 25). Use of starch derivatives and clays are taught at p. 4, lines 14+. Uptake of atmospheric moisture is taught to be low, implying some sort of moisture barrier although the application of an actual barrier coating is not disclosed. Disclosed dissolution rates appear to meet the limitations of claims 126 and 127. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on all of applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a water softening tablet. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

13. Claims 105-125 and 128 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/35234. The reference is in German. Reference is made to column and line in the equivalent Haerer et al., US 6,410,500 B1. The reference

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discloses molded body detergent compositions for dishwashers which contain soil release polymers. Disintegrants, including combinations of weak acids and carbonates, may be added (col. 4, lines 15+). The shape of the molded bodies is not important, but one dimension of at least 5 mm is preferred for practicality (col. 4, lines 59+). Surfactant may be present at 0-5%; 2% is exemplified (Table, col. 14). Tablets are preferably of 15-60 g, but the examiner takes the position that production of smaller tablets would be obvious in view of the general disclosure of "tablets". Free water appears to be absent from the formulations. Use of anti-encrustation or suspending polymers is not disclosed. Use of bleach is preferred, but a composition free of bleach is exemplified (Vd4, col. 15). Use of polyethylene glycol is disclosed at the top of col. 7. Use of phosphate builder at >15% is exemplified throughout. Ethoxylated alcohols may be added (col. 12, lines 52+). Addition of starch and its derivatives is disclosed at col. 4, lines 10+; addition of zeolites is disclosed at col. 12, line 22. Use of a wax coating on agglomerated particles is disclosed in cols. 7 and 8. This would serve as a moisture barrier. Different ingredients may be of different colors (col. 5, lines 38+). This reference differs from the claimed subject matter in that it does not disclose a composition which reads on all of applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a water softening tablet. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

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14. Any prior art made of record and not relied upon is of interest and is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



John R. Hardee  
Primary Examiner  
March 28, 2003